

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLARENCE BROWN,

Plaintiff,

vs.

CV F 05 0253 OWW WMW P

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

T. MORTON, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

This action proceeds on the original complaint. Plaintiff, an inmate in the custody of the California Department of Corrections at CSP Corcoran, brings this civil rights action against defendant correctional officials employed by the Department of Corrections at CSP Corcoran.

1 Plaintiff's sole claim in this complaint is that he was unfairly subjected to a prison
2 disciplinary process. Plaintiff specifically alleges that he was "set up" and subjected to unlawful
3 prosecution.

4 Plaintiff brings this action pursuant to section 1983. In Edwards v. Balisok, 520
5 U.S. 641, 644 (1997), the United States Supreme Court applied the doctrine articulated in Heck
6 v. Humphrey, 512 U.S. 477, 487 (1994), to prison disciplinary hearings. In Heck, the Court held
7 that a state prisoner's claim for damages for unconstitutional conviction or imprisonment is not
8 cognizable under 42 U.S.C. § 1983 if a judgment in favor of plaintiff would necessarily imply
9 the invalidity of his conviction or sentence, unless the prisoner can demonstrate that the
10 conviction or sentence has previously been invalidated. 512 U.S. at 487. In applying the
11 principle to the facts of Balisok, the Court held that a claim challenging the procedures used in a
12 prison disciplinary hearing, even if such a claim seeks money damages and no injunctive relief,
13 is not cognizable under § 1983 if the nature of the inmate's allegations are such that, if proven,
14 would necessarily imply the invalidity of the result of the prison disciplinary hearing. 520 U.S.
15 at 646. Because such a challenge, if successful, would invalidate the duration of the inmate's
16 confinement, it is properly brought as a habeas corpus petition and not under § 1983. Heck, 512
17 U.S. at 487; Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

18 Although the specific facts of Balisok involved allegations of deceit and bias on
19 the part of a hearing officer, the Court's reasoning applies to any claim which, if proven, would
20 have the effect of invalidating the result of a disciplinary hearing. The Ninth Circuit has recently
21 applied the Balisok rule to a case in which a prisoner sought damages based on allegations that
22 prison officials relied on false information to find him ineligible for parole. Butterfield v. Bail,
23 120 F.3d 1023 (9th Cir. 1997). Because the claim necessarily implied the invalidity of the
24 plaintiff's continued confinement, it could not accrue until the conviction or sentence had been
25 invalidated. Id.

1 In the instant case, plaintiff's core factual allegations are that he was prosecuted
2 unlawfully. Because plaintiff's claim necessarily implies the invalidity of plaintiff's continued
3 confinement as a result of his disciplinary hearing, plaintiff's claim will not accrue until the
4 conviction or sentence has been invalidated. The complaint must, therefore, be dismissed.
5 Plaintiff will, however, be granted leave to file an amended complaint.

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8 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
9 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
10 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
11 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
12 there is some affirmative link or connection between a defendant's actions and the claimed
13 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
14 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

15 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
16 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
17 amended complaint be complete in itself without reference to any prior pleading. This is
18 because, as a general rule, an amended complaint supersedes the original complaint. See Loux
19 v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
20 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
21 original complaint, each claim and the involvement of each defendant must be sufficiently
22 alleged.

23 In accordance with the above, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff's complaint is dismissed; and
25 2. Plaintiff is granted thirty days from the date of service of this order to file a
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1 first amended complaint that complies with the requirements of the Civil Rights Act, the Federal
2 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
3 docket number assigned this case and must be labeled "First Amended Complaint"; plaintiff
4 must file an original and two copies of the amended complaint; failure to file an amended
5 complaint in accordance with this order will result in a recommendation that this action be
6 dismissed.

7 IT IS SO ORDERED.

8 **Dated: June 14, 2005**
mmkd34

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE